

ASSEMBLY BILL

No. 1561

Introduced by Assembly Member Cox

February 21, 2003

An act to amend Section 1800.4 of the Insurance Code, and to add Section 1298.5 to the Penal Code, relating to bail.

LEGISLATIVE COUNSEL'S DIGEST

AB 1561, as introduced, Cox. Bail: real property.

Existing law specifies the circumstances under which a criminal defendant may be admitted to bail, and requires that bail be put in by a written undertaking. Existing law provides that holders of a bail permittee's license from the Department of Insurance may solicit, negotiate, issue, and deliver bail bonds, as defined. Existing law allows a defendant or any other person, in connection with an undertaking of bail, to give as security any equity in real property that he or she owns, provided that certain conditions are met and approval is obtained.

This bill would authorize a bail permittee, until January 1, 2009, to post a deed of trust with the county in which the relevant property is located as security for the posting of a real property bail draft, which would cause the release of the defendant. The bill would require the Department of Insurance to approve the form of these drafts, and would require the relevant county to notify the department of the posting of the deed of trust. By requiring a higher level of service from local officials, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund

to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1800.4 of the Insurance Code is
2 amended to read:

3 1800.4. As used in this chapter, the term “bail bond” includes
4 any contract not executed by a surety insurer for or method of
5 release of person arrested or confined on account of any actual or
6 alleged violation of the provisions of any law of this or any other
7 State or of any municipality in the State of California, including
8 any release by means of cash or other property deposited in lieu of
9 bail under the provisions of sections 1295 ~~and~~, 1298, *and* 1298.5
10 of the Penal Code whereby the attendance in court when required
11 by law and obedience to orders and judgment of any court by the
12 person released is guaranteed.

13 SEC. 2. Section 1298.5 is added to the Penal Code, to read:

14 1298.5. (a) Any bail permittee may post a deed of trust with
15 the official designated by the county where the property is located
16 as security for the posting of a real property bail draft.

17 (b) A “real property bail draft” is an undertaking of bail by
18 instrument in writing, the wording of which is approved by the
19 Department of Insurance, that when presented at a county or city
20 jail or to the proper county or city official, causes the release of a
21 defendant with the same rules, regulations, and restrictions as
22 apply to a surety bond.

23 (c) The value of the deed of trust executed to the county shall
24 not exceed the assessed value as shown on the current property tax
25 rolls less any liens and encumbrances.

26 (d) No bail permittee shall post real property bail drafts
27 exceeding 10 times the assessed value, less any liens and
28 encumbrances.



1 (e) No bail permittee shall have outstanding an amount of real
2 property in forfeiture status, as defined by Section 1305, that
3 exceeds 20 percent of the executed deeds of trust. The county or
4 city may refuse to accept any further real property bail drafts from
5 that permittee until the real property bail drafts in forfeiture status
6 are less than 20 percent.

7 (f) A bail permittee shall not charge a defendant in excess of 10
8 percent of the penal amount of a real property bail draft.

9 (g) Upon presentation to a county or city jail or the proper
10 county or city official of any real property bail draft, a fee of .01
11 percent of the penal amount of the real property bail draft shall be
12 paid by the bail permittee to the county or city jail or proper county
13 or city official.

14 (h) The Department of Insurance shall be notified of the
15 posting of the deed of trust by the county.

16 (i) All costs incurred by the county in recording the deed of
17 trust and notifying the Department of Insurance shall be borne by
18 the bail permittee.

19 (j) This section shall remain in effect only until January 1,
20 2009, and as of that date is repealed, unless a later enacted statute,
21 which is enacted before January 1, 2009, deletes or extends that
22 date.

23 SEC. 3. Notwithstanding Section 17610 of the Government
24 Code, if the Commission on State Mandates determines that this
25 act contains costs mandated by the state, reimbursement to local
26 agencies and school districts for those costs shall be made pursuant
27 to Part 7 (commencing with Section 17500) of Division 4 of Title
28 2 of the Government Code. If the statewide cost of the claim for
29 reimbursement does not exceed one million dollars (\$1,000,000),
30 reimbursement shall be made from the State Mandates Claims
31 Fund.

